Supreme Court, U.S.
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No. 96-2019

In The

Supreme Court of the United States

October Term, 1996

ANDREW MARTIN KRANYIK,

Plaintiff,

v.

CITY OF WEST MELBOURNE,
BRIAN LOCK, and PAOLO DONISI,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Federal Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Where excessive force by a police officer is alleged in a Section 1983 suit, is the standard for qualified immunity that the exact fact pattern must have been determined in an Eleventh Circuit case to be unconstitutional in order for the Section 1983 claim to survive a qualified immunity summary judgment motion?

2. May a single act be indicative of a policy or practice that gives rise to Section 1983 liability?

PARTIES

The names of all parties to the proceedings in the Court whose judgment is sought to be reviewed here appear in the caption of the case. There is no parent or subsidiary company of any party to be listed.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES ii

TABLE OF CITATIONS iv

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI 1

OPINIONS BELOW 1

STATEMENT OF JURISDICTION 1

STATUTE INVOLVED 1

STATEMENT OF THE CASE 2

REASONS FOR DENYING THE WRIT 6

1. The Eleventh Circuit Court of Appeals properly affirmed the Summary Judgment for Respondents on qualified immunity grounds 7

2. No sufficient "single act" policy or custom evidence was presented which would impose liability on either the City or chief Lock under 42 U.S.C. § 1983 13

CONCLUSION 17

TABLE OF CITATIONS

Page

CASES:

Adams v. Poag, 61 F.3d 1537 (11th Cir. 1995) *reh. den.* 70 F.3d 1287 (11th Cir. 1995) 15

Alm v. Moreth, 694 F.Supp. 1322 (N.D. Ill., E.D. 1988) 12, 13

Anderson v. Creighton, 483 U.S. 635, 97 L.Ed.2d 523, 107 S.Ct. 3034 (1987) 9, 10

Boyd v. Angarone, 729 F.Supp. 1194 (N.D. Ill., E.D. 1990) 12

Busby v. City of Orlando, 931 F.2d 764 (11th Cir. 1991) 16

City of Canton, Ohio v. Harris, 489 U.S. 378, 103 L.Ed.2d 412, 109 S.Ct. 1197 (1989) 14, 16

Colvin v. McDougall, 62 F.3d 1316 (11th Cir. 1995) 15

County Commissioners of Bryan County, Oklahoma v. Brown, 10 FLW Fed. S405 (U.S. Supreme Court, decided 4/28/97) 16

Daniels v. Williams, 474 U.S. 327, 88 L.Ed.2d 662, 106 S.Ct. 662 (1986) 16

Davidson v. Cannon, 474 U.S. 344, 88 L.Ed.2d 677, 106 S.Ct. 668 (1986) 16

Gilmere v. City of Atlanta, Georgia, 737 F.2d 894, 901 (11th Cir. 1984), *cert. den.* 476 U.S. 1115 (1986) 14

Graham v. Connor, 490 U.S. 386, 104 L.Ed.2d 443, 109 S.Ct. 1865 (1989) 6, 7

Harris v. Ostrout, 65 F.3d 912 (11th Cir. 1995) 15

Lassiter v. Alabama A&M University, Board of Trustees, 28 F.3d 1146 (11th Cir. 1994) 7, 12

TABLE OF CITATIONS – Continued

Page

Malley v. Briggs, 475 U.S. 335, 89 L.Ed.2d 271, 106 S.Ct. 1092 (1986) 7, 8, 10

Mitchell v. Forsyth, 472 U.S. 511, 86 L.Ed.2d 411, 105 S.Ct. 2806 (1985) 10

Monell v. New York Department of Social Services, 436 U.S. 658, 56 L.Ed.2d 611, 98 S.Ct. 2018 (1978) 15

Parker v. Williams, 862 F.2d 1471 (11th Cir. 1989) 13

Popham v. City of Talladega, 908 F.2d 1561 (11th Cir. 1990) 13

Gilmere v. City of Atlanta, Georgia, 737 F.2d 894 (11th Cir. 1984) *cert. den.* 476 U.S. 1115 (1986) 13

Rich v. Dollar, 841 F.2d 1558 (11th Cir. 1988) 12

Samples On Behalf of Samples v. City of Atlanta, 846 F.2d 1328 (11th Cir. 1988) 12

Singleton v. McDougall, 932 F.Supp. 1386 (M.D. Fla. 1996) 15

Swanson v. Fields, 814 F.Supp. 1007 (D. Kan. 1993) *Aff'd* 13 F.3d 407 (10th Cir. 1993) 12

Sweatt v. Bailey, 876 F.Supp. 1571 (M.D. Ala. 1995) 11

Telfair v. Gilberg, 868 F.Supp. 1396 (S.D. Ga. 1994) 10, 11

Tennessee v. Garner, 471 U.S. 1, 85 L.Ed.2d 1, 105 S.Ct. 1694 (1985) 10

Walton v. City of Southfield, 995 F.2d 1331 (6th Cir. 1993) 11

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondents, THE CITY OF WEST MELBOURNE, BRIAN LOCK, and PAOLO DONISI, respectfully object to and oppose Petitioner's, ANDREW KRANYIK's, Petition for Writ of Certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The unreported opinion of the Court of Appeals is reproduced in the Appendix filed with Petitioner's Petition for Writ of Certiorari ("App.") at 1a. The unreported decision of the District Court in this case is reproduced in that same Appendix at 2a.

STATE OF JURISDICTION

The Court of Appeals for the Eleventh Circuit entered its judgment on December 27, 1996. Petitioner invoked the jurisdiction of this Court pursuant to 28 U.S.C. § 1254(1).

STATUTE INVOLVED

The pertinent provision of 42 U.S.C. § 1983 is set forth below:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, or any State Territory or District of Columbia, subjects,

> or causes to be subjected, any citizen of the United States or any other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress.

STATEMENT OF THE CASE

Respondents, City of West Melbourne, Brian Lock and Paolo Donisi, disagree with the following assertions in Petitioner Kranyik's Statement of the Case which contains absolutely no record citations. Record references will be the same as the designations used in the Eleventh Circuit record. Respondents disagree with Petitioner's assertion that he was handcuffed behind his back by these Respondents approximately three hours before arrival of a mobile testing unit. The record does not support that contention. Petitioner was arrested at 10:53 p.m. (R1-51-23). The breath alcohol testing unit arrived at 11:35 p.m. and Petitioner Kranyik would have been released from handcuffs before then (R1-51-pp.24-26). The Sheriff's van which transported Petitioner Kranyik arrived shortly after 12:37 a.m. (R1-51-25). Petitioner Kranyik was released from handcuffs when the Sheriff's Batmobile arrived and when Sheriff's deputies took him in the Sheriff's van (R1-51-25). Petitioner Kranyik agreed that the handcuffs were removed 10 or 15 minutes while Petitioner Kranyik was involved with the Sheriff's Batmobile (R1-42-124). Respondent Donisi released those handcuffs (R1-42-77). Handcuffs of nonparty Sheriff's

deputies, not handcuffs of the Respondents, were placed by nonparty deputies on Petitioner Kranyik after he refused breathalizer testing. These handcuffs of others were on about the same length of time as Respondent Donisi's (R1-42-133). Petitioner Kranyik arrived at the Sheriff's jail facility after 1:00 a.m. in the Sheriff's custody, the Sheriff's van and shackled in the Sheriff's handcuffs and leg irons (R1-42-pp.126-128, 129). The record shows that the Petitioner was handcuffed by Officer Donisi less than 42 minutes initially before he was placed in the Sheriff's handcuffs.

The following additional facts regarding the misstatements of the Petitioner should be considered by the Court in ruling upon the propriety of this Writ:

With regard to the contention that alternative measures to conduct sobriety testing existed, Mr. Kranyik refused to participate in roadside sobriety tests because he was concerned he could not pass them due to earlier alcohol consumption (R1-42-92). Kranyik did not dispute having dilated eyes, watery or glassy eyes, slurring of speech or speech which was thick-tongued, that his face was flushed, that he stumbled or that there was an odor of alcohol on his breath (R1-42-pp.158-159). On the night in question, Petitioner Kranyik admitted drinking two beers and three large Canadian Clubs with ginger ale (R1-42-64).

Respondent Donisi used two sets of handcuffs to handcuff Mr. Kranyik in order to allow him more room between his arms (R1-51-20). Respondent Donisi released Petitioner Kranyik from handcuffs on at least two occasions and observed no cuts or lacerations on Respondent's wrists (R1-51-31). Petitioner Kranyik stated that

the Sheriff's handcuffs also hurt his wrists and the Sheriff's handcuffs were on about the same length of time as Respondent Donisi's (R1-42-pp.126-128, 133). The Sheriff's handcuffs were placed in the area between the wrist bone and the back of each hand (R1-42-134). Petitioner Kranyik admitted there were no indentations on his wrists after the use of Respondent Donisi's handcuffs (R1-42-131). Petitioner Kranyik also admits that he did not point out anything wrong with either of his wrists or either of his hands while he was at the jail facility following his arrest (R1-42-130). The record includes both an audiotape and a videotape of the process of Mr. Kranyik's arrest (R1-38) (attached to the Notice of Filing). The booking photographs taken at the jail show no cuts or lacerations on either wrist of Petitioner Kranyik (R1-34-Exhibit "B"). The jail booking sheet shows no indication of any injury to either of Respondents' wrists (R1-34-Exhibit "A").

Additionally, the record below established that Respondent Donisi received training regarding the handcuffing process during the police academy (R1-51-pp.17-18). It was the policy of the City of West Melbourne to handcuff arrestees behind their back (R1-51-18). Respondent Chief Lock, in his affidavit, testified that it was the customary practice of every police agency with whom he was familiar, literally dozens, to handcuff arrestees behind their back (R1-37-2). Chief Lock established policies at the City of West Melbourne which permitted use of only reasonable force during the course of an arrest and he was familiar that the police academy taught arrest techniques, handcuffing techniques and the procedure whereby arrestees were to be handcuffed

behind their back (R1-37-2). Respondent Lock cautioned officers to avoid using excessive force during the course of an arrest (R1-37-2). Respondent Lock was also aware that police academies train and instruct officers to avoid use of excessive force during an arrest (R1-37-2,3). Respondent Lock did not personally participate in the arrest and was not present at the scene of the arrest of Petitioner Kranyik (R1-37-2).

With regard to his treating physicians, Dr. Woodward admitted that the transmission work in which Petitioner Kranyik engages involves repetitive forceful twisting which can itself cause carpal tunnel problems (R1-41-pp.8-10). Dr. Woodward could not tell when Petitioner Kranyik's alleged carpal tunnel syndrome occurred (R1-41-pp.9-10). Dr. Woodward felt that given Petitioner's age, weight and type of work, the Petitioner would have some soreness in his wrists even before this arrest (R1-41-11). Dr. Woodward admitted that being overweight can be a factor in carpal tunnel syndrome cases (R1-41-13). Mr. Kraynik was overweight. He admitted that the causation of carpal tunnel syndrome is a subject of considerable debate (R1-41-12). Both Dr. Woodward and Dr. Weiss admitted that they saw no evidence of bruising, lacerations or scars on either of Petitioner Kranyik's wrists (R1-41-34; R1-40-7). Dr. Weiss, another of the Petitioner's treating physicians, agreed that repetitive use of hands by a transmission mechanic can cause carpal tunnel syndrome as a result of work related activities (R1-40-17). Tinel's medical test for the wrist was generally negative for both of Petitioner's wrists (R1-40-20).

Dr. Weiss observed a normal range of motion in both wrists subsequent to Petitioner's arrest (R1-40-22).

REASONS FOR DENYING THE WRIT

United States Supreme Court Rule 10, although neither controlling nor fully measuring the court's discretion, indicates a number of factors governing review on certiorari. Apparently, the Petitioner seeks review under Rule 10(c) on the alleged basis that the Eleventh Circuit Court of Appeals has decided an important federal question in a way that conflicts with relevant decisions of the United States Supreme Court. It is quite noteworthy that the last sentence of Rule 10 states that certiorari is rarely granted where the asserted error consists of misapplication of a properly stated rule of law. The issue presented by Petitioner is not an important federal question and no conflict exists.

Although Petitioner relies heavily on *Graham v. Connor*, 490 U.S. 386, 104 L.Ed.2d 443, 109 S.Ct. 1865 (1989), the United States Supreme Court stated in footnote 12 at 104 L.Ed.2d 457, "since no claim of qualified immunity has been raised in this case, however, we express no view on its proper application in excessive force cases that arise under the Fourth Amendment." It thus appears that *Graham* did not decide this issue in a way that conflicts with Eleventh Circuit cases since qualified immunity issues were not before the court in *Graham*.

Petitioner erroneously claims that the Eleventh Circuit simply grants summary judgment on qualified immunity grounds unless the exact fact pattern has been

determined to be unconstitutional. That certainly misstates the impact of *Lassiter v. Alabama A&M University, Board of Trustees*, 28 F.3d 1146 (11th Cir. 1994) (en banc) and the rule it summarized at 1149-50. There, the Eleventh Circuit made it clear, discussing earlier precedents, that the facts of prior decided cases need not be the same as the facts of the immediate case but they need to be materially similar. That statement of the law is clearly in harmony with United States Supreme Court precedence and no conflict exists. As the last sentence of Supreme Court Rule 10 states, misapplication of a properly stated rule of law is rarely a proper basis for writ of certiorari. This writ should be denied.

I.

THE ELEVENTH CIRCUIT COURT OF APPEALS PROPERLY AFFIRMED THE SUMMARY JUDGMENT FOR RESPONDENTS ON QUALIFIED IMMUNITY GROUNDS.

The well reasoned District Court order does not conflict with United States Supreme Court precedents. *Graham v. Connor*, 490 U.S. 386, 104 L.Ed.2d 443, 109 S.Ct. 1865 (1989) made it clear in Footnote 12 at 104 L.Ed.2d 457 that qualified immunity was not raised in the *Graham* decision and the Supreme Court expressed no view on its application in excessive force cases arising under the Fourth Amendment. If the Supreme Court did not consider the issue, it is illogical to cite *Graham* as conflict authority.

Petitioner also cites *Malley v. Briggs*, 475 U.S. 335, 89 L.Ed.2d 271, 106 S.Ct. 1092 (1986) as alleged conflict

authority. *Malley* held that an officer can get qualified immunity for objectively reasonable actions even where officers of reasonable competence could disagree with the action taken. *Malley* held that an individual can get qualified immunity unless a request for a warrant so lacks indicia of probable cause that no reasonably competent officer could conclude that a warrant should issue. *Malley* certainly does not support a contention that the district court order somehow conflicted with Supreme Court precedent. At page 7 of the Petition for Writ of Certiorari, Kranyik claims that the basis for appeal was an alleged extended handcuffing "without at least removing the handcuffs periodically." At page 8, Petitioner again misrepresents the record and contends that Respondent Donisi handcuffed the plaintiff behind his back for more than three hours. There are no record citations to support that contention. On the contrary, the record clearly refutes Petitioner's contentions in this regard. Petitioner was arrested at 10:53 p.m. (R1-51-23). The breath alcohol testing unit arrived at 11:35 p.m. and Petitioner would have been released from handcuffs before then (R1-51-pp.24-26). Petitioner agreed that the handcuffs were removed 10 or 15 minutes while he was involved with the Batmobile (R1-42-124). Respondent Donisi released those handcuffs (R1-42-77). Other non-party sheriff's deputies then placed Petitioner in handcuffs after he refused the breathalizer (R1-42-126-128, 129, 133). Petitioner agreed that the handcuffs of non-party sheriff's deputies were on about the same length of time as Officer Donisi's handcuffs (R1-42-133). The sheriff's handcuffs were placed in the same area between the wrist bone and the back of each hand (R1-42-134). Petitioner admitted there were no

indentations on his wrists after use of Officer Donisi's handcuffs (R1-42-131). Petitioner did not point out anything wrong with either of his wrists or hands while he was at the jail and did not request medical treatment at the jail (R1-42-130). The booking photographs taken at the jail of Petitioner show no cuts or lacerations on either of his wrists (R1-34-Exhibit "B"). The jail booking sheet shows no indication of injury to either of Petitioner's wrists (R1-34-Exhibit "A").

It therefore clearly appears from the record on appeal that Respondent Donisi did exactly what Petitioner claims should have been done. Petitioner does not claim he should not have been handcuffed at all. The record clearly establishes that Officer Donisi removed the handcuffs periodically and that the remainder of the handcuffing after Petitioner refused the breathalizer examination was done by non-party sheriff's deputies, not Respondent Donisi.

Petitioner cites *Anderson v. Creighton*, 483 U.S. 635, 97 L.Ed.2d 523, 107 S.Ct. 3034 (1987), a Fourth Amendment case holding individuals were entitled to qualified immunity. At 97 L.Ed.2d 523, the United States Supreme Court stated that the unlawfulness of the challenged action must be apparent in light of preexisting law. The court also there stated that qualified immunity protects all but the plainly incompetent. *Anderson* stated that qualified immunity reflects a balance struck across the board and represents the norm, rather than the exception. *Anderson* at 97 L.Ed.2d 532, 534. *Anderson* clearly requires that the right allegedly violated must have been clearly established in a more particularized sense so that the contours of the right are sufficiently clear to a reasonable officer

that he would understand his actions violate this clearly established constitutional right. *Anderson*, 97 L.Ed.2d 531. At 97 L.Ed.2d 530, the Supreme Court warned against use of overly general concepts as a means of defeating qualified immunity. At 97 L.Ed.2d 532-533, *Anderson* rejected complicating qualified immunity analysis by making the scope or extent of immunity turn on the precise nature of various officials' duties or the precise character of the particular rights alleged to have been violated. The Supreme Court was particularly concerned about giving officials enough assurance to allow them to perform their valuable public services. It seems that *Anderson* stands for the proposition that a single qualified immunity rule should be applied across the board – the standards regarding qualified immunity should not change simply because a Fourth Amendment claim is being made.

Fourth Amendment cases have not thus far set a special standard for qualified immunity analysis. *Malley, supra*, certainly did not establish a separate analytical framework. Qualified immunity was given to officials who were alleged to have violated the Fourth Amendment in *Mitchell v. Forsyth*, 472 U.S. 511, 86 L.Ed.2d 411, 105 S.Ct. 2806 (1985). There is absolutely no reason to treat excessive force Fourth Amendment Claims different than other varieties of Fourth Amendment claims. *Tennessee v. Garner*, 471 U.S. 1, 85 L.Ed.2d 1, 105 S.Ct. 1694 (1985) is not really a qualified immunity case since the individuals had been dismissed as indicated at 85 L.Ed.2d 16.

Telfair v. Gilberg, 868 F.Supp. 1396 (S.D. Ga. 1994), cited by the Petitioner, was affirmed by the Eleventh Circuit at 87 F.3d 1330. The lower court decision held that

there was a material issue of fact which prevented application of qualified immunity. *Telfair* can provide no comfort to the Petitioner since there is absolutely no record evidence indicating that the Petitioner is physically handicapped, was choked or even knocked over. The page cited by Petitioner, 1403, does not deal with the Fourth Amendment reasonableness standard, but rather discusses Eighth Amendment standards and Fourteenth Amendment standards to determine if the rights were clearly established.

Sweatt v. Bailey, 876 F.Supp. 1571 (M.D. Ala. 1995) was decided after Petitioner's 1993 arrest. The court in *Sweatt* concluded that the police chief was entitled to qualified immunity and an officer who unjustifiedly beat an arrestee while the arrestee was talking on the telephone was not entitled to qualified immunity. No such beating took place involving Petitioner Kranyik. *Walton v. City of Southfield*, 995 F.2d 1331 (6th Cir. 1993) was not only decided after Petitioner's arrest but is a case from the Sixth Circuit. *Walton* did not involve an intoxicated arrestee such as Petitioner Kranyik. *Walton* involved an arrestee having an objective arm injury before the arrest who, before the arrest, informed the officer that her arm was previously injured. Petitioner Kranyik claims no pre-existing injury. As pointed out by Judge Conway in her well reasoned opinion in the instant case (R2-65-pp.8-9), *Walton* involved an issue of using handcuffs in the first instance, not simply a failure to remove handcuffs after they were lawfully applied. Even Petitioner Kranyik agrees the handcuffs in this instance were lawfully applied by Respondent Donisi. See Petition for Writ of Certiorari, pp.7-8.

In the Petition for Writ of Certiorari, Petitioner confuses case law regarding the threshold issue of qualified immunity with principles pertaining to ultimate liability under 42 U.S.C. § 1983 and the reasonableness standard of the Fourth Amendment. It seems from the petition that Kranyik is not challenging the summary judgment in favor of Respondent Chief Lock. Many of the cases cited simply do not really focus on the issue of qualified immunity. For example, *Samples On Behalf of Samples v. City of Atlanta*, 846 F.2d 1328 (11th Cir. 1988) does not really focus on the issue of qualified immunity. Petitioner simply has failed to demonstrate that any respondent violated clearly established law. *Rich v. Dollar*, 841 F.2d 1558, 1563-64 (11th Cir. 1988); *Lassiter*, 28 F.3d at 1150 n. 3.

Boyd v. Angarone, 729 F.Supp. 1194 (M.D. Ill. 1990) granted summary judgment in favor of the defendants. In *Boyd*, officers conducting an arrest were entitled to qualified immunity despite the fact that the plaintiff there alleged a bruised and swollen left wrist and pain in the back of his neck as a result of being handcuffed with his hands behind him. Although it is not particularly a qualified immunity case, the court in *Swanson v. Fields*, 814 F.Supp. 1007 (D. Kan. 1993), *aff'd*, 13 F.3d 407 (10th Cir. 1993) held that complaints of minor pain and discomfort failed to sustain any inference of inordinate force being used during the arrest. There, the plaintiff complained of tight handcuffs and pain in his neck after he was grabbed by police officers, forced against a vehicle and handcuffed. *Swanson* granted summary judgment for individual defendants. *Alm v. Moreth*, 694 F.Supp. 1322, 1324-25 (M.D. Ill., E.D. 1988) held that an officer was entitled to qualified immunity when he handcuffed an individual

during an arrest whose wrist had previous surgery and was not completely healed. There, Alm informed Moreth before being handcuffed that his wrist had not completely healed and would cause him pain. Petitioner Kranyik does not present an egregious conduct case and there is no reason from a public policy standpoint to accept certiorari in this matter where summary judgment was properly granted.

II.

NO SUFFICIENT "SINGLE ACT" POLICY OR CUSTOM EVIDENCE WAS PRESENTED WHICH WOULD IMPOSE LIABILITY ON EITHER THE CITY OR CHIEF LOCK UNDER 42 U.S.C. § 1983.

A "single act" policy liability theory is inapplicable to the facts at bar and is not supported by the record. *Parker v. Williams*, 862 F.2d 1471 (11th Cir. 1989) involves much more egregious facts than Petitioner's case. Further, in *Parker*, judgments against the County and the Sheriff were vacated and the case was remanded for a new trial. There is no evidence that Officer Donisi is a final decision maker and Officer Donisi's actions cannot constitute official policy of either the City of West Melbourne or Respondent Lock. See *Popham v. City of Talladega*, 908 F.2d 1561 (11th Cir. 1990). In *Popham*, a decision by the mayor to leave a guard position unfilled did not create a policy to maintain an inadequately staffed jail. The record does not establish any unconstitutional policy. Further, the record does not even establish that Respondent Lock is the final decision maker regarding the training of municipal employees.

Respondent Donisi did in fact receive training in the use of handcuffs (R2-65-10). Respondent Donisi was instructed in the use of handcuffs during his police academy training at Brevard Community College (R1-51-pp.17-18). Chief Lock was aware of and relied upon the fact that handcuffing procedures were taught to police officers at the police academies (R1-37-2). Petitioner Kranyik has presented no evidence indicating that any lack of training or supervision was the moving force behind any alleged constitutional deprivation and no constitutional deprivation has been shown. *Gilmere v. City of Atlanta, Georgia*, 737 F.2d 894, 901 (11th Cir. 1984), *cert. den.* 476 U.S. 1115 (1986); *City of Canton, Ohio v. Harris*, 489 U.S. 378, 109 S.Ct. 1197, 103 L.Ed.2d 412 (1989).

There was no evidence showing how allowing officers to use their own handcuffs caused any constitutional injury (R2-65-pp.10-12). There has been no showing that Officer Donisi's handcuffs were different in kind or nature from those generally used by other police agencies. There was no proof that these handcuffs were particularly injurious. Further, there was no proof that any other type of restraint would have been less injurious. There was no evidence that plastic tie restraints would have been any less injurious than handcuffs. There was no evidence that Petitioner would have been handcuffed a shorter length of time if he had been transported to the City of West Melbourne police station. There was no evidence that the City of West Melbourne had a breath testing machine operator on duty that evening or that any such operator was not otherwise occupied. There was no evidence concerning what holding facilities were available at the City of West Melbourne police station. There

was no evidence showing how long arrestees typically remained handcuffed following their arrival at the City of West Melbourne police station.

There was, however, evidence that the City had a policy, known by Officer Donisi, that police officers were to call an ambulance if the arrestee complained about handcuffs (R1-51-27). Certainly that policy satisfied constitutional requirements. The City of West Melbourne is a small city and the Sheriff's Batmobile was properly used in order not to tie up all of the City's resources (R1-51-27). Respondent Lock established policies which permitted use of only reasonable force during the course of an arrest (R1-37-2). Respondent Lock encouraged police officers to be mindful of the physical safety of arrestees (R1-37-2). Officers were taught by the police academy to avoid use of excessive force during the course of an arrest (R1-37-3).

Hindsight is certainly inappropriate in judging what a reasonable person in the Respondent's position would have done. *Singleton v. McDougall*, 932 F.Supp. 1386 (M.D. Fla. 1996). The custom or policy standard of liability established by *Monell v. New York Department of Social Services*, 436 U.S. 658, 694, 98 S.Ct. 2018, 2037-38, 56 L.Ed.2d 611 (1977) applies to officials sued in their official capacity. *Colvin v. McDougall*, 62 F.3d 1316, 1318 (11th Cir. 1995). No respondeat superior liability exists under § 1983. *Harris v. Osterout*, 65 F.3d 912, 917 (11th Cir. 1995). Respondent Lock did not personally participate in Kranyik's arrest or handcuffing (R1-37-2) and did not establish any policy which violated Petitioner Kranyik's constitutional rights. He was not present at the scene of the arrest and has no liability. *Adams v. Poag*, 61 F.3d 1537,

1544 (11th Cir. 1995), *reh. den.*, 70 F.3d 1287 (11th Cir. 1995). Since the City has been named as a party, neither Respondent Lock nor Respondent Donisi should have been named in their official capacities. *Busby v. City of Orlando*, 931 F.2d 764, 776 (11th Cir. Fla. 1991).

There is no showing in this record that any failure to train amounted to deliberate indifference to the rights of persons with whom police officers can be expected to come into contact. *Canton*, 489 U.S. at 388, 109 S.Ct. at 1204. To be actionable, the failure to train must reflect a deliberate or conscious choice and the deficiency in training must be closely related to the ultimate injury. *Canton* at 489 U.S. 389, 391, 109 S.Ct. at 1205, 1206. The need for more or different training must be so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that policymakers are deliberately indifferent to the need for training. *Canton* at 489 U.S. 390, 109 S.Ct. 1205. No such deficiencies have been shown in this record. The policies which the record establish show that officers were encouraged to use only reasonable force and medical attention should be given when complaints are made after handcuffing. Mere negligence is not sufficient to establish a violation of petitioner's constitutional rights. *Daniels v. Williams*, 474 U.S. 327, 88 L.Ed.2d 662, 106 S.Ct. 662 (1986); *Davidson v. Cannon*, 474 U.S. 344, 88 L.Ed.2d 677, 106 S.Ct. 668 (1986). No unconstitutional policy, single act or otherwise, has been shown and this writ should be refused.

Recently the Supreme Court in *County Commissioners of Bryan County, Oklahoma v. Brown*, 10 FLW Fed. S405 (U.S. Supreme Court decided 4/28/97) rejected liability under a single act policy theory involving the decision to

fire a sheriff's deputy. At page 11 of this decision, the Supreme Court emphasized the importance of applying stringent culpability and causation requirements in "single act" cases. Petitioner has presented no evidence that either the City of West Melbourne or Chief Lock had a conscious disregard for a high risk that Officer Donisi would use excessive force in violation of Petitioner's constitutional rights. The pages of the record cited by Respondents above prove undisputedly the complete contrary. There is no evidence of improper training or supervision, no evidence of culpability and no evidence of causation. No unconstitutional policy, single act or otherwise, has been shown and this Writ should be refused.

CONCLUSION

For the reasons stated herein, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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